

This Instrument was prepared by:

Charles R. Gardner  
Gardner, Wadsworth, Duggar, Bist & Wiener, P.A.  
1300 Thomaswood Drive  
Tallahassee, Florida 32308

## **AGREEMENT MODIFYING EASEMENTS**

This *Agreement Modifying Easements* (hereinafter referred to as this "Agreement") is entered into this \_\_\_\_ day of February, 2006, by and among:

**WEST TENNESSEE, L.L.C.**, a Florida limited liability company, whose mailing address is 2104 Delta Way, Suite 5, Tallahassee, Florida 32308 (hereinafter referred to as the "Owner");

**LEON COUNTY, FLORIDA**, a charter county and political subdivision of the State of Florida, whose mailing address is 301 South Monroe Street, Tallahassee, Florida 32301 (hereinafter referred to as the "County"); and

**STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION**, whose mailing address is P.O. Box 607, Chipley, Florida 32428 (hereinafter referred to as the "DOT")

The Owner, the County, and the DOT are hereinafter collectively referred to as the "Parties."

## **BACKGROUND INFORMATION**

A. The Owner owns the real property described on the attached **Exhibit "A"** (hereinafter referred to as the "Property") less and except that certain property (hereinafter referred to as "Lot #2") conveyed by the Owner to Applejam, Inc., a Florida corporation, evidenced by that certain Warranty Deed dated October 26, 2005, recorded in Official Records Book 3404, at Page 2208 of the Public Records of Leon County, Florida.

B. The Property has been subdivided into five (5) lots (hereinafter referred to as the "Subdivision"), the approval for which is found in that certain *Affidavit* recorded in Official Records Book 3342, at Page 1764 of the Public Records of Leon County, Florida, and that certain letter from the City of Tallahassee Department of Growth Management recorded in Official Records Book 3380, at Page 773 of the Public Records of Leon County, Florida.

C. The County has certain stormwater drainage rights with respect to a portion of the Property as reflected in that certain *Drainage Easement* (hereinafter referred to as the "County Easement") dated July 16, 1965, recorded in Official Records Book 196, at Page 535 of the Public Records of Leon County, Florida.

D. The DOT has certain stormwater drainage rights with respect to a portion of the Property as reflected in that certain *Perpetual Easement* (hereinafter referred to as the "DOT Easement") dated June 26, 2004, recorded in Official Records Book 3146, at Page 2031 of the Public Records of Leon County, Florida.

E. The County Easement and the DOT Easement are hereinafter collectively referred to as the "Easements". The Easements traverse Lot 4 and Lot 5 of the Subdivision.

F. The City of Tallahassee approved the Site Plan for the development of the Property on September 1, 2005. A true and correct copy of the approved Site Plan is attached hereto as **Exhibit "B"**.

G. In order to implement the Site Plan, the Owner has asked the County and the DOT to limit the manner by which they may exercise their respective rights under the Easements and the County and the DOT have agreed to the request on the terms and conditions provided in this Agreement.

### **TERMS AND CONDITIONS**

In consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties and each of them, the Owner, the County, and the DOT hereby agree as follows:

1. The statements of fact reflected in the foregoing section of this Agreement are true and correct and are incorporated herein by reference.

2. The rights of the DOT and the County under and pursuant to the Easements are hereby limited to the right to pass stormwater through the constructed stormwater conveyance system depicted on the *Construction Plans* (for Paving, Drainage, Utility Service and landscaping for Swank Redevelopment) attached **Exhibit "C"** (hereinafter referred to as the "Improvements") which have been approved by the City of Tallahassee (ie by its Water & Sewer Department on December 14, 2005 and by the Growth Management Department on December 29, 2005) and the right to maintain and repair such Improvements consistent with the provisions of paragraph 3 below.

3. The DOT and the County shall have the right to enter onto, and depart from, and to disturb, the surface area of the property described in the Easements for the purpose of maintaining, repairing and keeping the Improvements in usable condition at all times. Any damage to the Property caused by the maintenance and repair or lack of maintenance and repair of the Improvements shall be promptly restored by the County and/or DOT (ie whichever performs the work) to the condition in which it existed prior to such maintenance and repair or lack thereof. It is expressly understood and agreed that no vertical structures (ie buildings) or other improvements shall be built within the area of the Easements except those lateral (ie paving and curbing) and subsurface improvements depicted on the *Construction Plans* attached hereto as **Exhibit "C"**.

4. This Agreement shall be binding on and inure to the benefit of the successors and assigns of the Parties.

5. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. Any action to enforce any of the provisions of this Agreement must be maintained in Tallahassee, Leon County, Florida.

6. Failure to insist upon strict compliance with any term, covenant, or condition of this Agreement shall not be deemed a waiver of it. No waiver or relinquishment of a right or power under this Agreement shall be deemed a waiver of that right or power at any other time.

7. This Agreement shall not be extended, changed, or modified, except in writing duly executed by the Parties.

8. This Agreement has been negotiated by the parties with the advice of counsel and, in the event of any ambiguity herein, such ambiguity shall not be construed against any party as the author of it.

9. In the event of litigation between the Parties or any two of them to construe or enforce the terms of this Agreement or otherwise arising out of this Agreement, the prevailing party in such litigation shall be entitled to recover from the nonprevailing party its reasonable costs and attorneys fees incurred in maintaining or defending such litigation. The term litigation shall include appellate proceedings. The liability of the parties, as set forth in this paragraph, is intended to be consistent with limitations of Florida law, including any waiver by the DOT or the County of sovereign immunity pursuant to Section 768.28, Florida Statutes. No obligation imposed by this paragraph shall be deemed to alter said waiver or to extend the liability of either party beyond such limits, nor shall any such obligation be deemed or construed as a waiver of any defense of sovereign immunity to which a party may be entitled.

10. This Agreement constitutes the entire agreement of the Parties with respect to the subject matter reflected in it.

IN WITNESS WHEREOF, the Parties have executed this Agreement.

Witnesses:

WEST TENNESSEE, L.L.C.,  
a Florida limited liability company

Print Name: Jeffrey C. Swank

By: Jeffrey C. Swank

Jeffrey C. Swank

Its: Managing Member

Print Name: Donald Dwyer

STATE OF FLORIDA,  
COUNTY OF LEON.

Sworn to, subscribed, and acknowledged before me this 6<sup>th</sup> day of February, 2006, by Jeffrey C. Swank, as Managing Member of West Tennessee, L.L.C., a Florida limited liability company, on behalf of said limited liability company. (☒) He is personally known by me; or (☐) He produced his Florida driver's license as identification.

Notary Public

3



Cathy Sleeth  
Commission # DD269186  
Expires November 29, 2007  
Bonded Troy Fain Insurance Inc 800-385-7019

27

LEON COUNTY, FLORIDA,  
a charter county and political subdivision  
of the State of Florida

\_\_\_\_\_  
Print Name: \_\_\_\_\_

By: \_\_\_\_\_

Bill Proctor, Chairman  
Board of County Commissioners

\_\_\_\_\_  
Print Name: \_\_\_\_\_

ATTESTED BY:  
BOB INZER, CLERK OF COURT

BY: \_\_\_\_\_  
CLERK

APPROVED AS TO FORM:  
COUNTY ATTORNEY'S OFFICE  
LEON COUNTY, FLORIDA

BY: \_\_\_\_\_  
HERBERT W.A. THIELE, ESQ.  
COUNTY ATTORNEY

STATE OF FLORIDA,  
COUNTY OF LEON.

Sworn to, subscribed, and acknowledged before me this \_\_\_\_ day of February, 2006, by Bill Proctor, as Chairman of the Board of County Commissioners of Leon County, Florida, a charter county and political subdivision of the State of Florida, on behalf of said county and commission. ( ) He is personally known by me; or ( ) He produced his Florida driver's license as identification.

\_\_\_\_\_  
Notary Public

STATE OF FLORIDA  
DEPARTMENT OF TRANSPORTATION

\_\_\_\_\_  
Print Name: \_\_\_\_\_

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Its: \_\_\_\_\_

\_\_\_\_\_  
Print Name: \_\_\_\_\_

STATE OF FLORIDA,  
COUNTY OF \_\_\_\_\_.

Sworn to, subscribed, and acknowledged before me this \_\_\_\_ day of February, 2006, by  
\_\_\_\_\_, as \_\_\_\_\_ of the State of Florida  
Department of Transportation, an agency of the State of Florida, on behalf of said agency.  
( ) He is personally known by me; or ( ) He produced his Florida driver's license as  
identification.

\_\_\_\_\_  
Notary Public

**EXHIBIT "A"**

**Legal Description for Swank Redevelopment**  
MBC #1357.001/05-032

A 6.91 acre parcel of land as described in Official Records Book 2327, Page 1386 lying in Section 30, Township 1 North, Range 1 West, Leon County, Florida. Surveyed and more particularly described as follows:

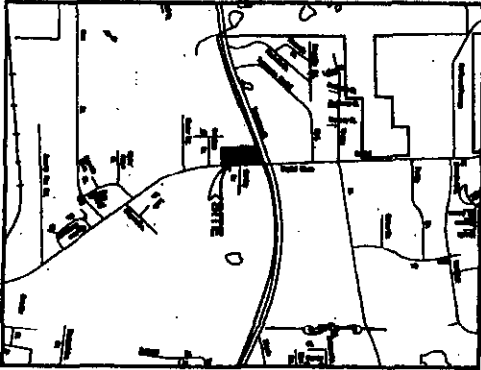
Commence at a found rod & cap (#6844) lying in the right of way of State Road S-263 (Capital Circle Northwest) marking the Southeast corner of the Northeast Quarter of Section 30, Township 1 North, Range 1 West, Leon County, Florida and run thence South 89 degrees 19 minutes 56 seconds West 9.06 feet to a set 1/2" rod & cap (#7245) and the POINT OF BEGINNING; From said POINT OF BEGINNING continue South 89 degrees 19 minutes 56 seconds West 372.62 feet to a found 1" iron pipe; thence North 00 degrees 26 minutes 30 seconds West 743.34 feet to a found concrete monument lying on the Southerly right of way boundary of West Tennessee Street (right of way varies); thence North 68 degrees 43 minutes 30 seconds East along said Southerly right of way boundary 127.52 feet to a set 1/2" rod & cap (#7245) and a point of curve concave Southeasterly and having a radius of 4882.33 feet; thence Northeasterly along said right of way curve through a central angle of 03 degrees 12 minutes 07 seconds for an arc distance of 273.05 feet, (chord of said curve being North 70 degrees 08 minutes 17 seconds East 273.05 feet to a set 1/2" rod & cap (#7245); thence South 70 degrees 40 minutes 20 seconds West 52.42 feet to a found 5/8" rod & cap (#D.O.T.); thence South 21 degrees 18 minutes 41 seconds East 55.78 feet to a found 5/8" rod & cap (#D.O.T.) and a point of intersection with said Southerly right of way boundary with the Westerly right of way boundary of State Road S-263 (Capital Circle Northwest) (right of way varies); thence leaving said Southerly right of way boundary run South 00 degrees 23 minutes 28 seconds East along said Westerly right of way boundary 245.05 feet to a found 5/8" rod & cap (#D.O.T.); thence South 89 degrees 11 minutes 20 seconds West 2.05 feet to a found 5/8" rod & cap (#D.O.T.); thence South 00 degrees 58 minutes 16 seconds West 300.18 feet to a set 1/2" rod & cap (#7245); thence South 03 degrees 36 minutes 37 seconds East 100.15 feet to a set 1/2" rod & cap (#7245); thence South 00 degrees 27 minutes 45 seconds East 140.19 feet to the POINT OF BEGINNING.  
Containing 6.91 acres, more or less.

**EXHIBIT "B"**

# TYPE 'A' SITE PLAN FOR SWANK REDEVELOPMENT

SHEET	DESCRIPTION
1.0	COVER SHEET
2.0	EXISTING CONDITIONS MAP
3.0	GEOMETRIC PLAN
4.0	GRADING PLAN
5.0	UTILITY PLAN
6.1	PRE-DEVELOPMENT DRAINAGE MAP
6.2	POST-DEVELOPMENT DRAINAGE MAP

**INDEX**

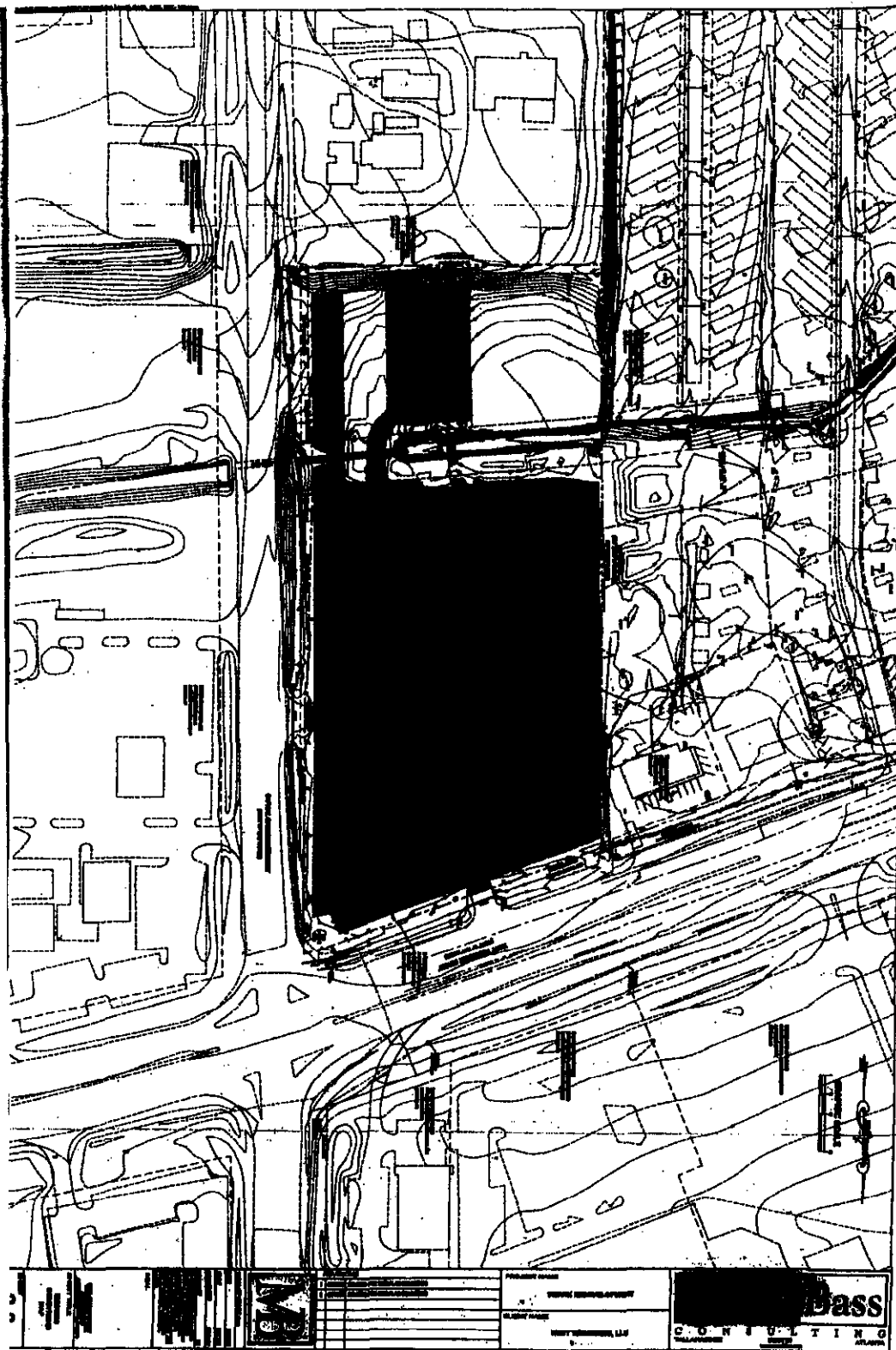


TEL. NO.	21-30-2012-0000
PROJECT NAME	SWANK REDEVELOPMENT
CLIENT NAME	WEST TENNESSEE, LLC 2704 DELTA WAY, SUITE 5 TALLAHASSEE, FL 32303
DESIGNED BY	MOORE BASS CONSULTING, INC. 866 NORTH GARDEN STREET TALLAHASSEE, FLORIDA 32303 (904)222-6973
ENGINEER OF RECORD	CLAYTON A. CAMPBELL, P.E. FL REG. NO. 82587 866 NORTH GARDEN STREET TALLAHASSEE, FLORIDA 32303 (904)222-6973

**PROJECT DATA**

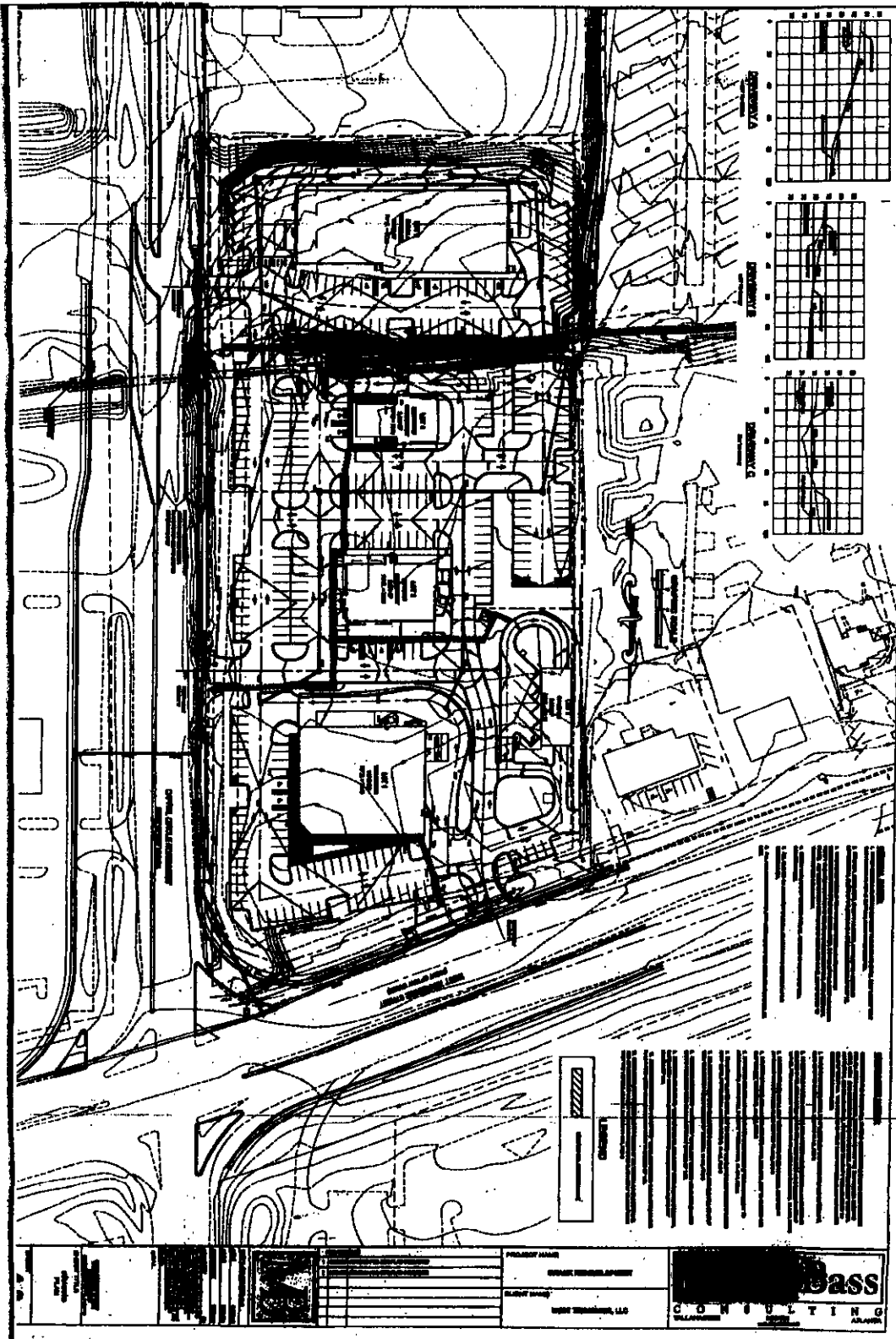
DATE OF PREPARED: 06/13/00  
TYPE 'A' SITE PLAN APPROVAL: [Signature]

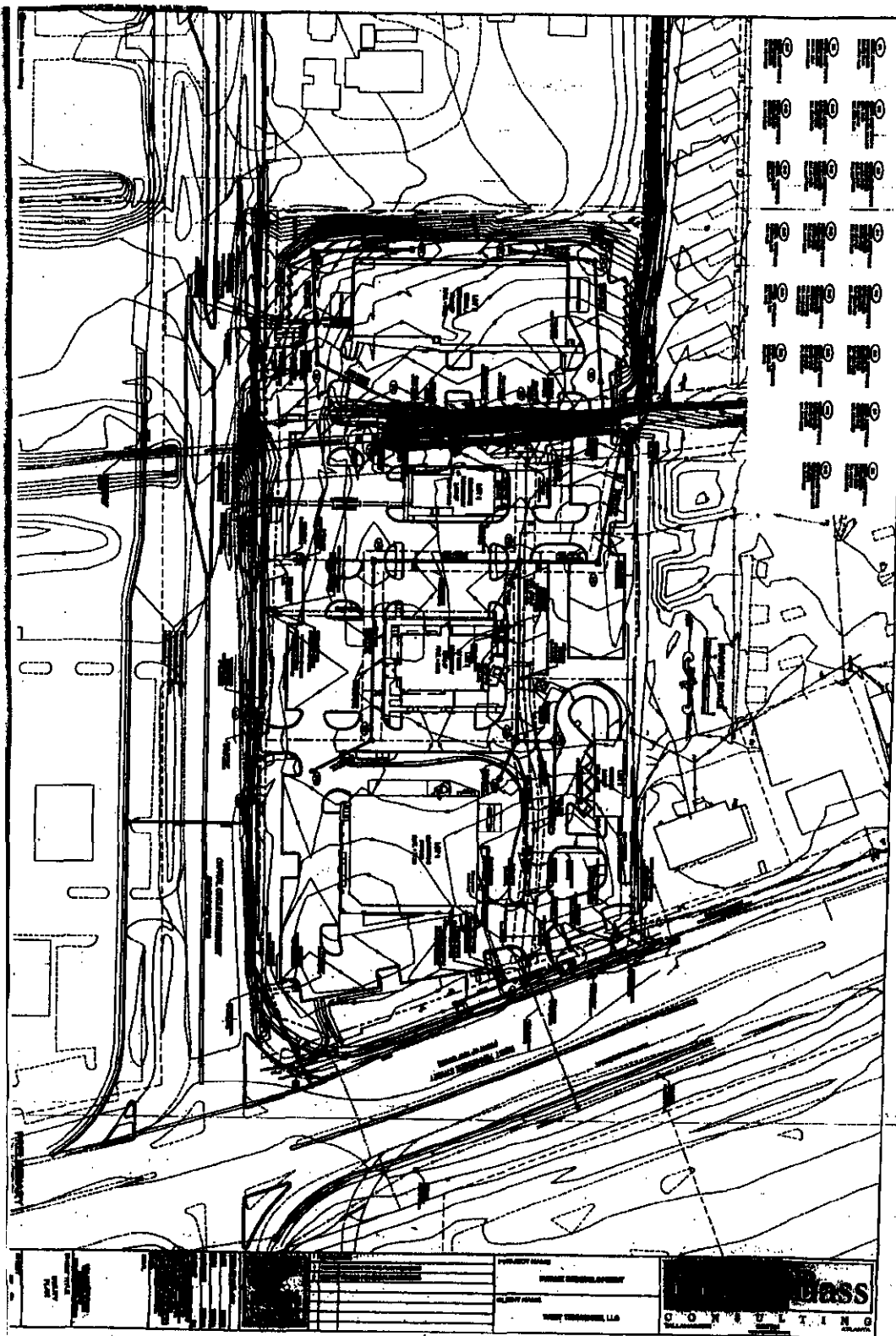
<p><b>MOORE BASS CONSULTING, INC.</b> 866 NORTH GARDEN STREET TALLAHASSEE, FLORIDA 32303 (904)222-6973</p>	<p><b>West Tennessee, LLC</b> 2704 DELTA WAY, SUITE 5 TALLAHASSEE, FL 32303</p>	<p><b>Bass</b> CONSULTING ENGINEERS</p>
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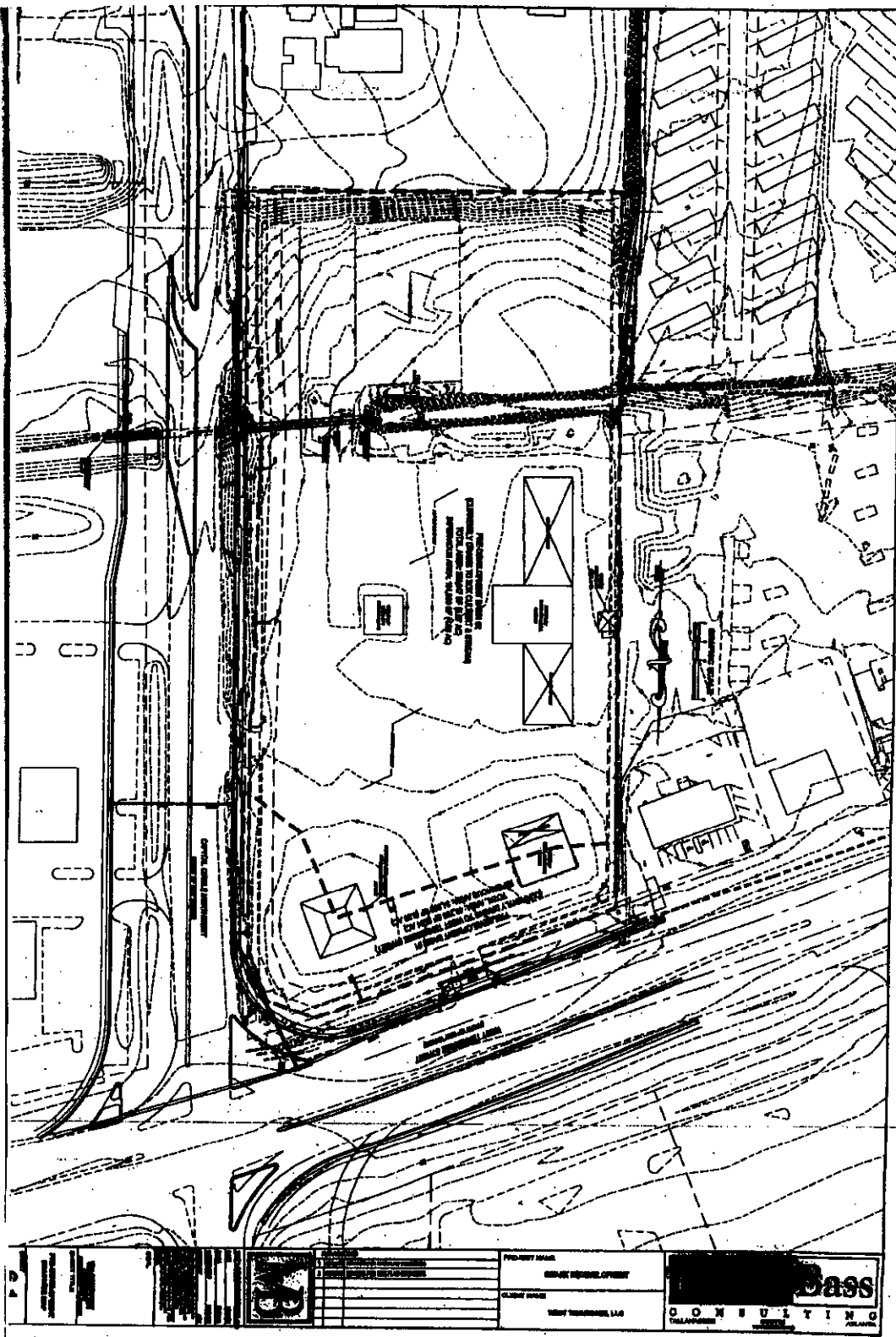


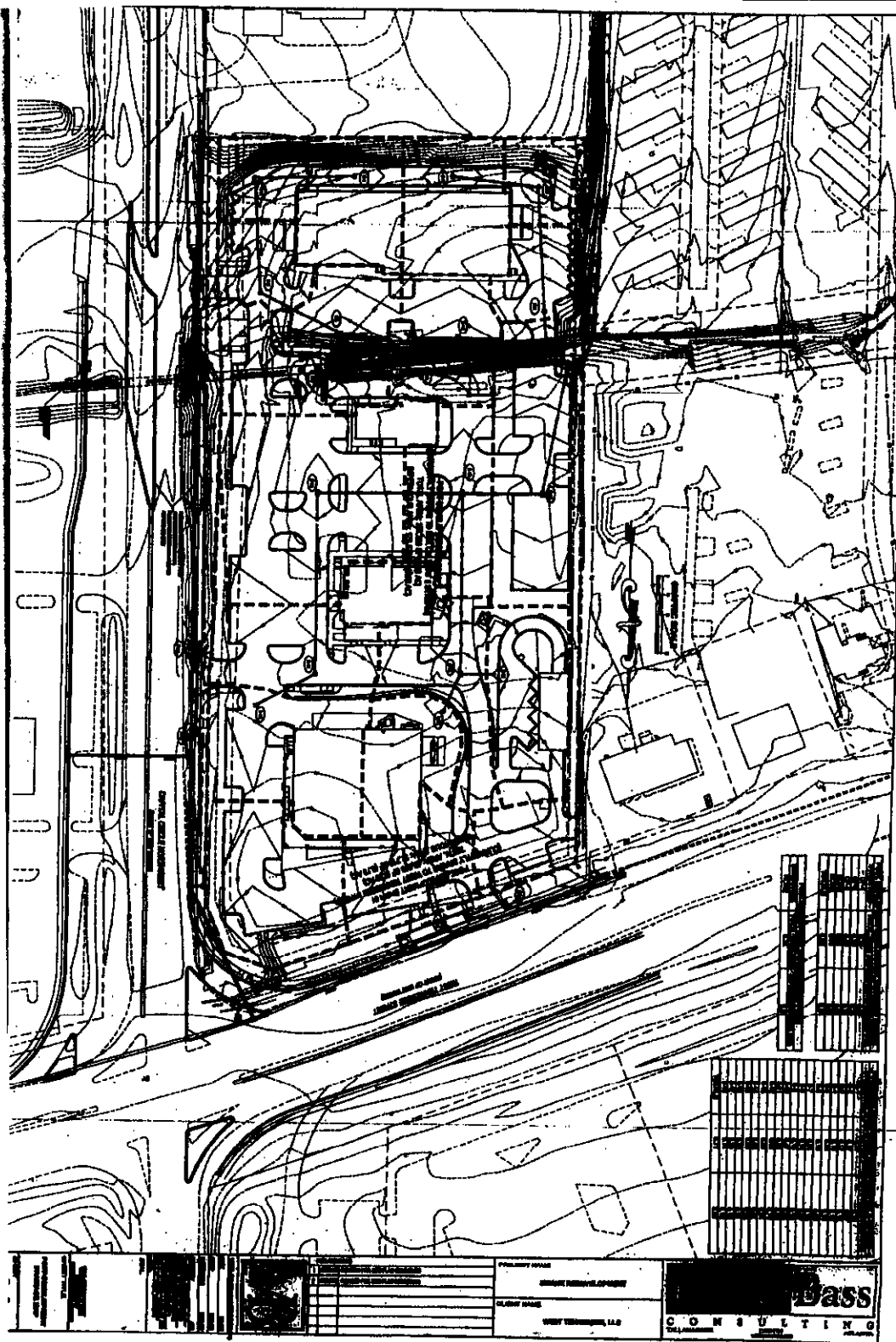










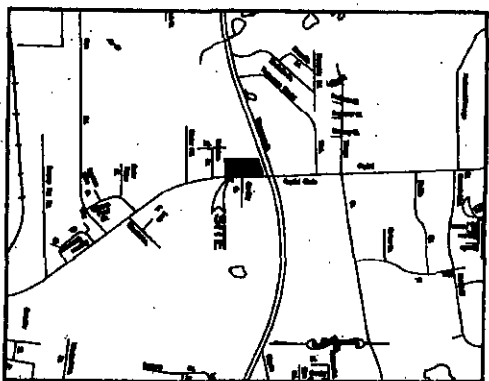


**EXHIBIT "C"**

# CONSTRUCTION PLANS PAVING, DRAINAGE, UTILITY SERVICE AND LANDSCAPING FOR **SWANK REDEVELOPMENT**

SHEET	DESCRIPTION
1.0	COVER SHEET
2.0	GENERAL NOTES SHEET
3.0	EXISTING CONDITIONS MAP
4.0	DEMOLITION AND EROSION CONTROL PLAN
5.0	GEOMETRY PLAN
6.0	GRADING PLAN
7.0	UTILITY PLAN
7.1	SAINTMARY SEWER PROFILE
8.1	PRE-DEVELOPMENT DRAINAGE MAP
8.2	POST-DEVELOPMENT DRAINAGE MAP
9.0	DETAIL SHEET
10.0	LANDSCAPE PLAN
11.0	IRRIGATION PLAN
12.0	LANDSCAPE & IRRIGATION DETAIL SHEET
8.1	BOX CULVERT DETAIL

## INDEX



LOCATION MAP  
SCALE 1" = 100'

TAX ID NO.	21-30-20-002-0000
PROJECT NAME	SWANK REDEVELOPMENT
CLIENT NAME	WEST TENNESSEE, LLC 2104 DELTA WAY, SUITE 5 TALLAHASSEE, FL 32303
DESIGNED BY	MOORE BASS CONSULTING, INC. 805 NORTH GARDEN STREET TALLAHASSEE, FLORIDA 32305 (904) 222-4878
CHECKED BY	CLAYTON K. CAMPBELL, P.E. P.L. REG. NO. 62597 805 NORTH GARDEN STREET TALLAHASSEE, FLORIDA 32305 (904) 222-4878
STRUCTURAL ENGINEER OF RECORD	WILLIAM R. BALDWIN, P.E. BARTLEY ENGINEERING, INC. P.L. REG. NO. 7865 2828 NORTH HARBOUR STREET, SUITE 200B TALLAHASSEE, FLORIDA 32305 (904) 284-3204

## PROJECT DATA

APPROVED

*[Signature]*

RECEIVED  
DEC 1 1999






PROJECT NAME	SWANK REDEVELOPMENT
CLIENT NAME	WEST TENNESSEE, LLC 2104 DELTA WAY, SUITE 5 TALLAHASSEE, FL 32303
DESIGNED BY	MOORE BASS CONSULTING, INC. 805 NORTH GARDEN STREET TALLAHASSEE, FLORIDA 32305 (904) 222-4878
CHECKED BY	CLAYTON K. CAMPBELL, P.E. P.L. REG. NO. 62597 805 NORTH GARDEN STREET TALLAHASSEE, FLORIDA 32305 (904) 222-4878
STRUCTURAL ENGINEER OF RECORD	WILLIAM R. BALDWIN, P.E. BARTLEY ENGINEERING, INC. P.L. REG. NO. 7865 2828 NORTH HARBOUR STREET, SUITE 200B TALLAHASSEE, FLORIDA 32305 (904) 284-3204

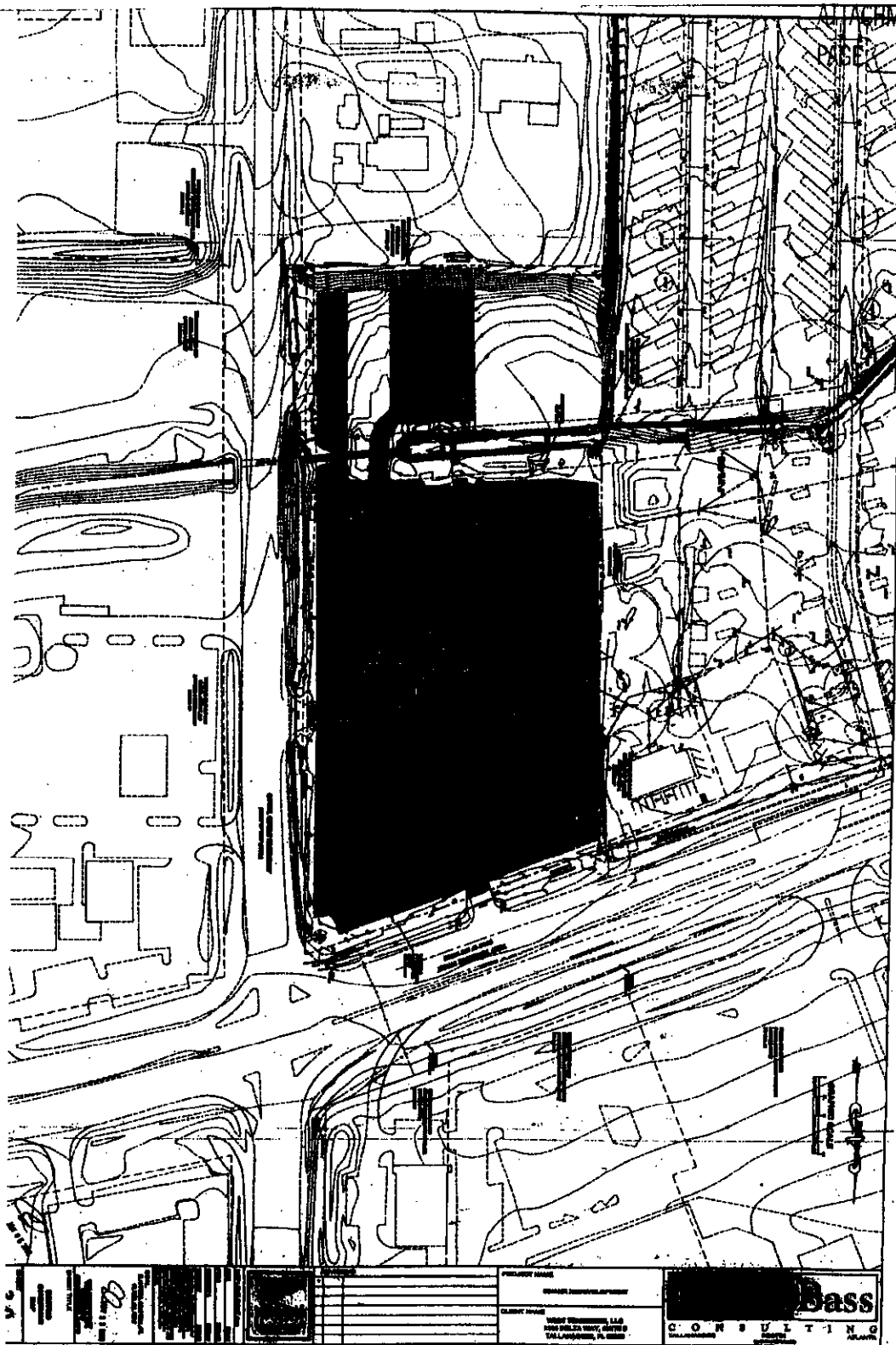
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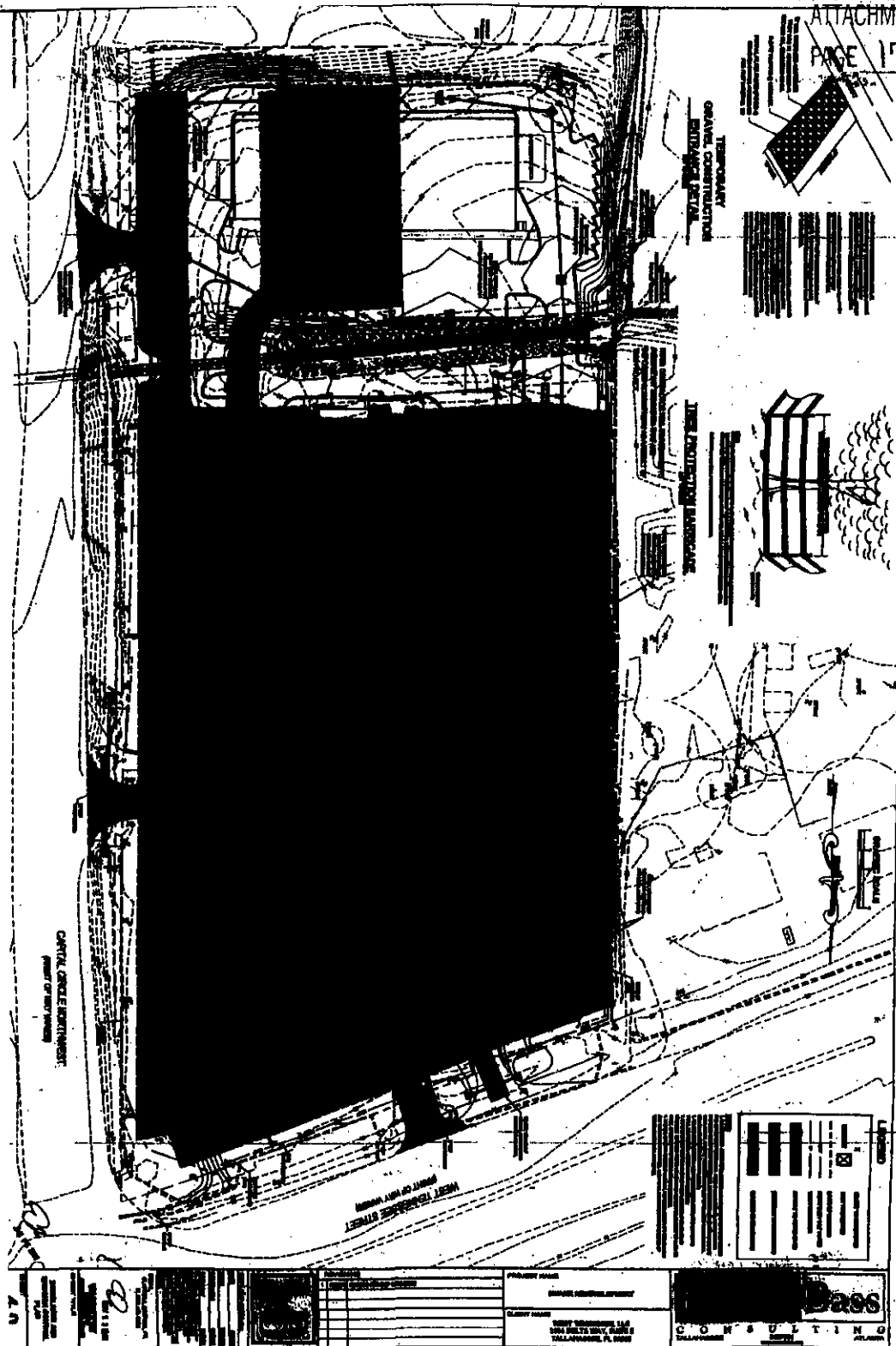
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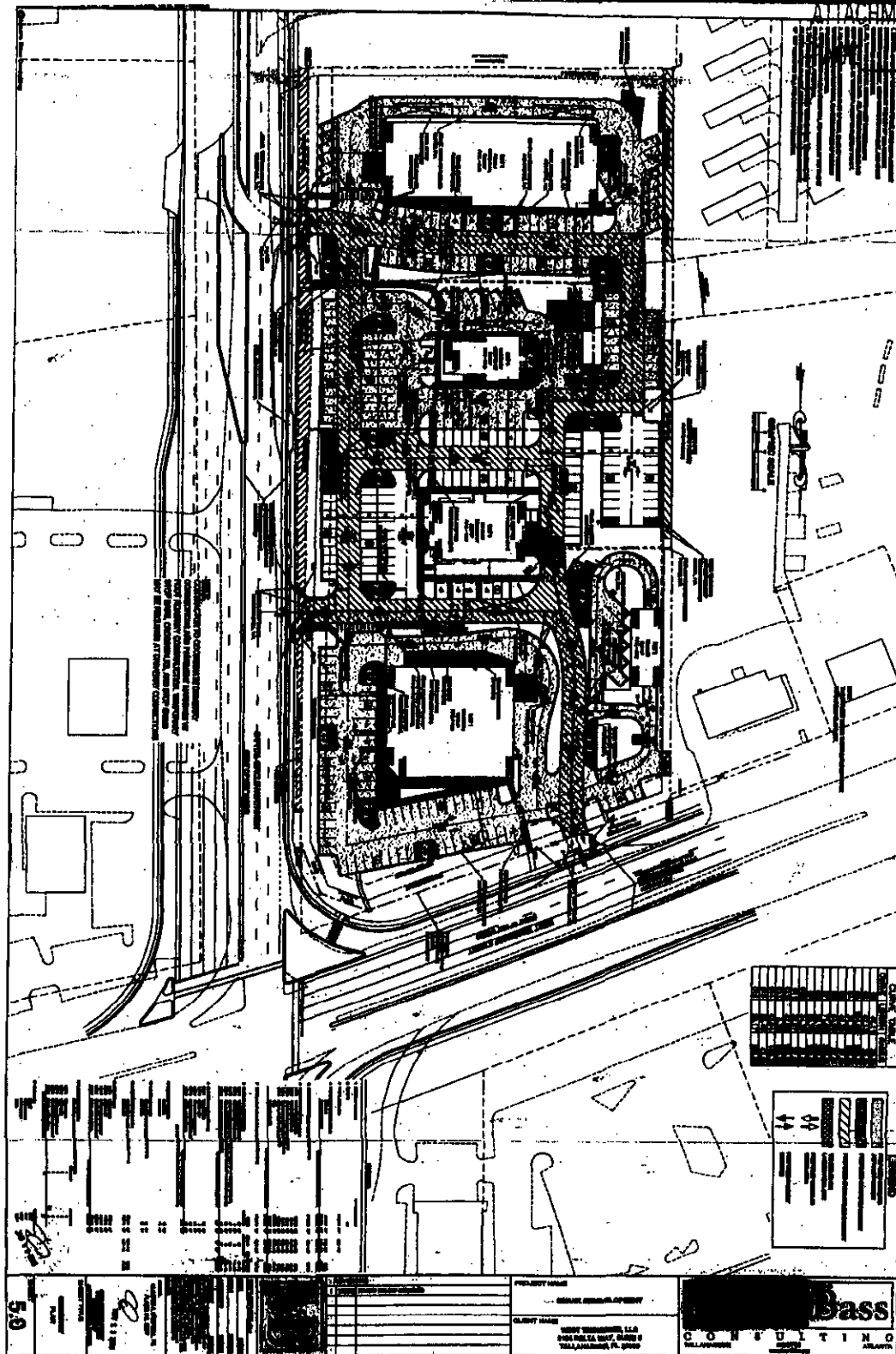
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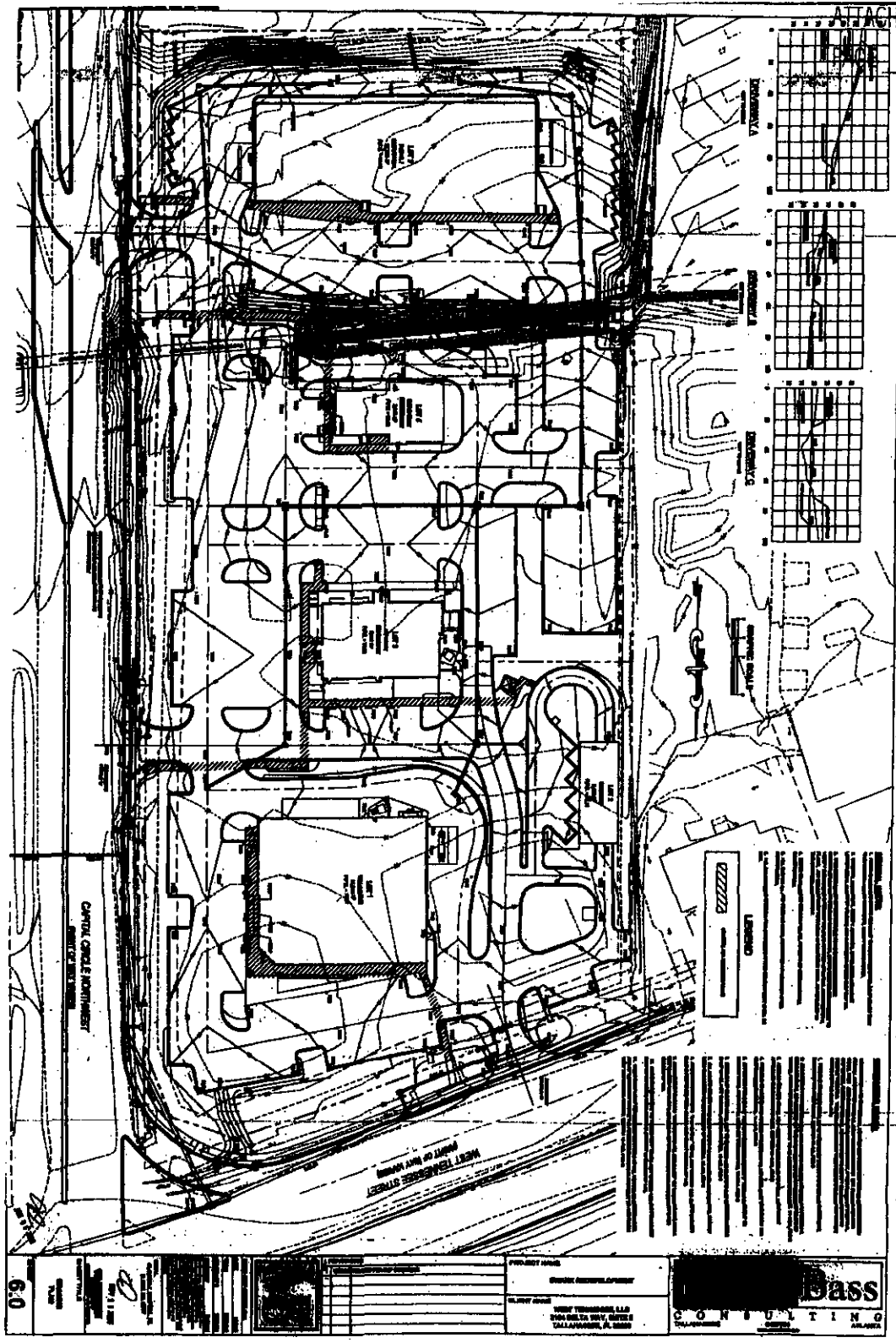
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					 <b>CONSULTING</b>	

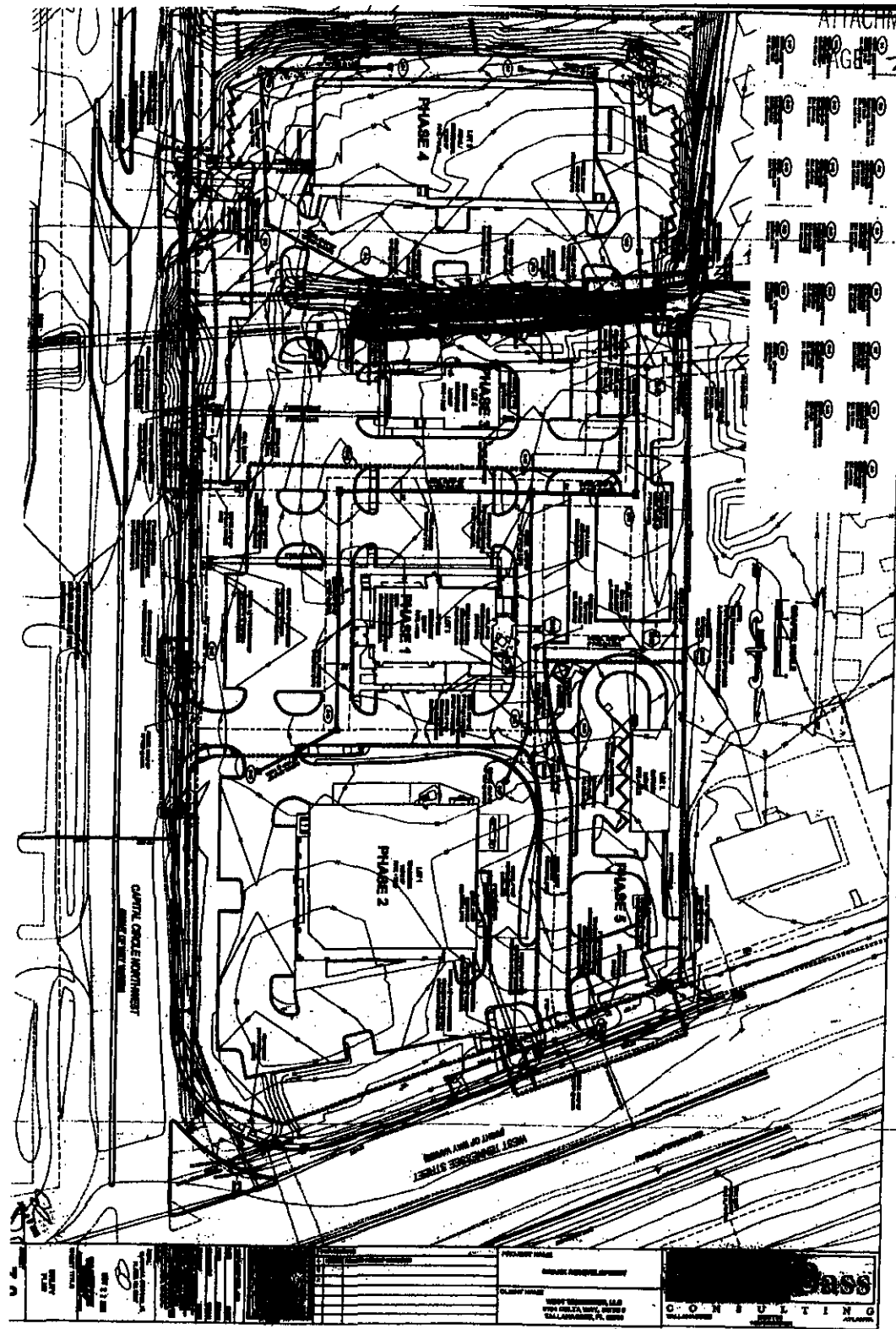


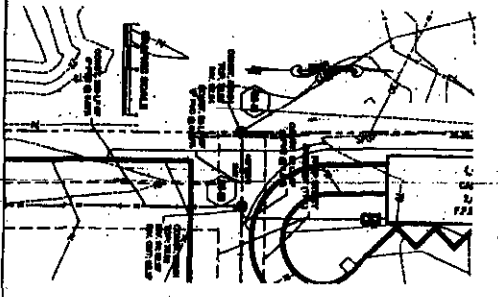
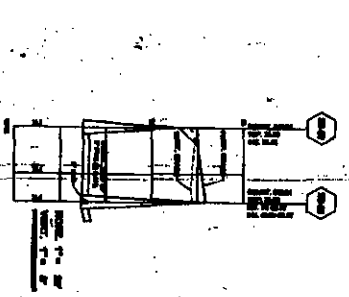
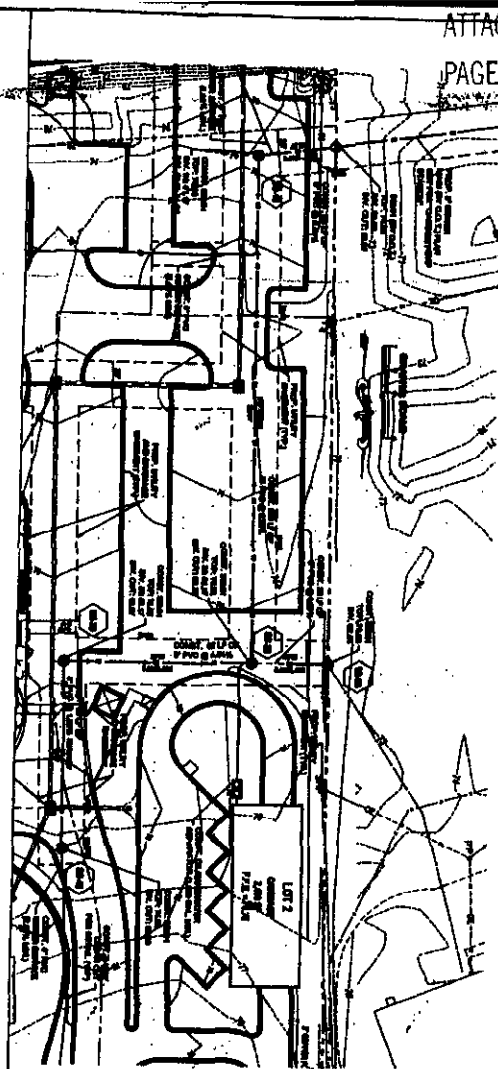
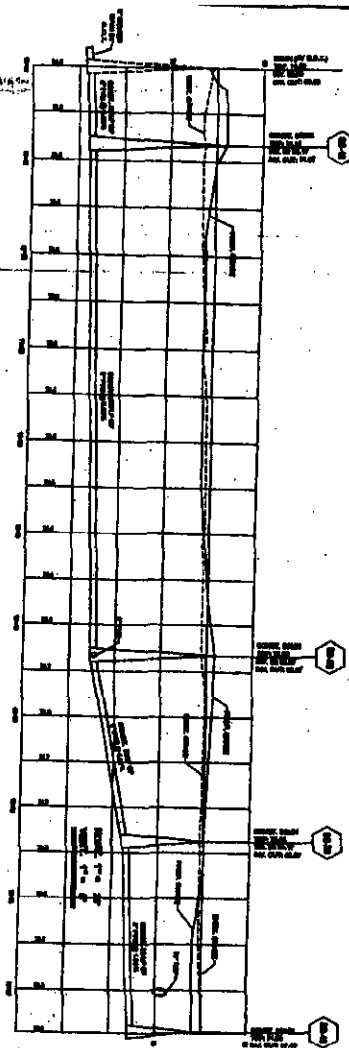






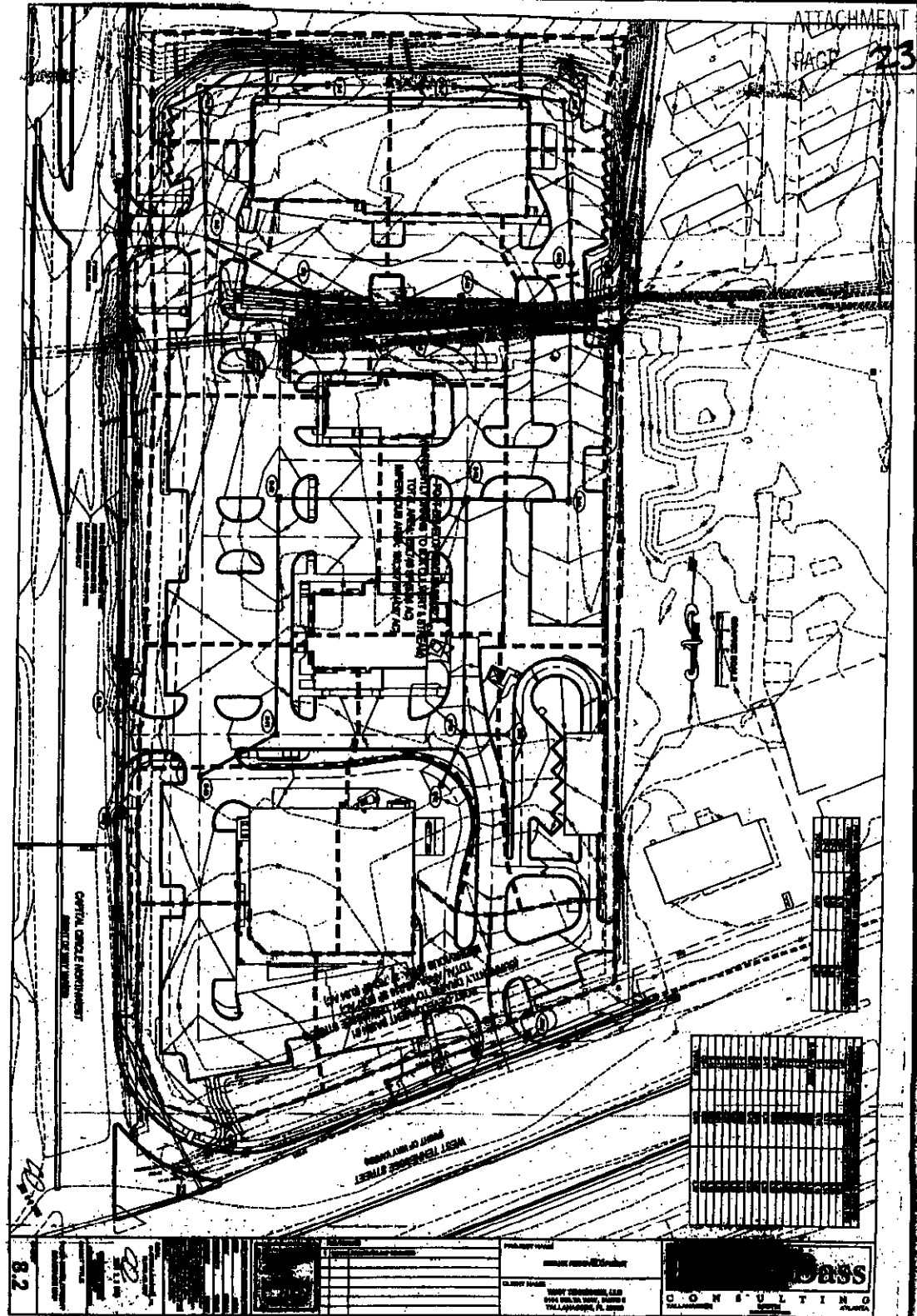


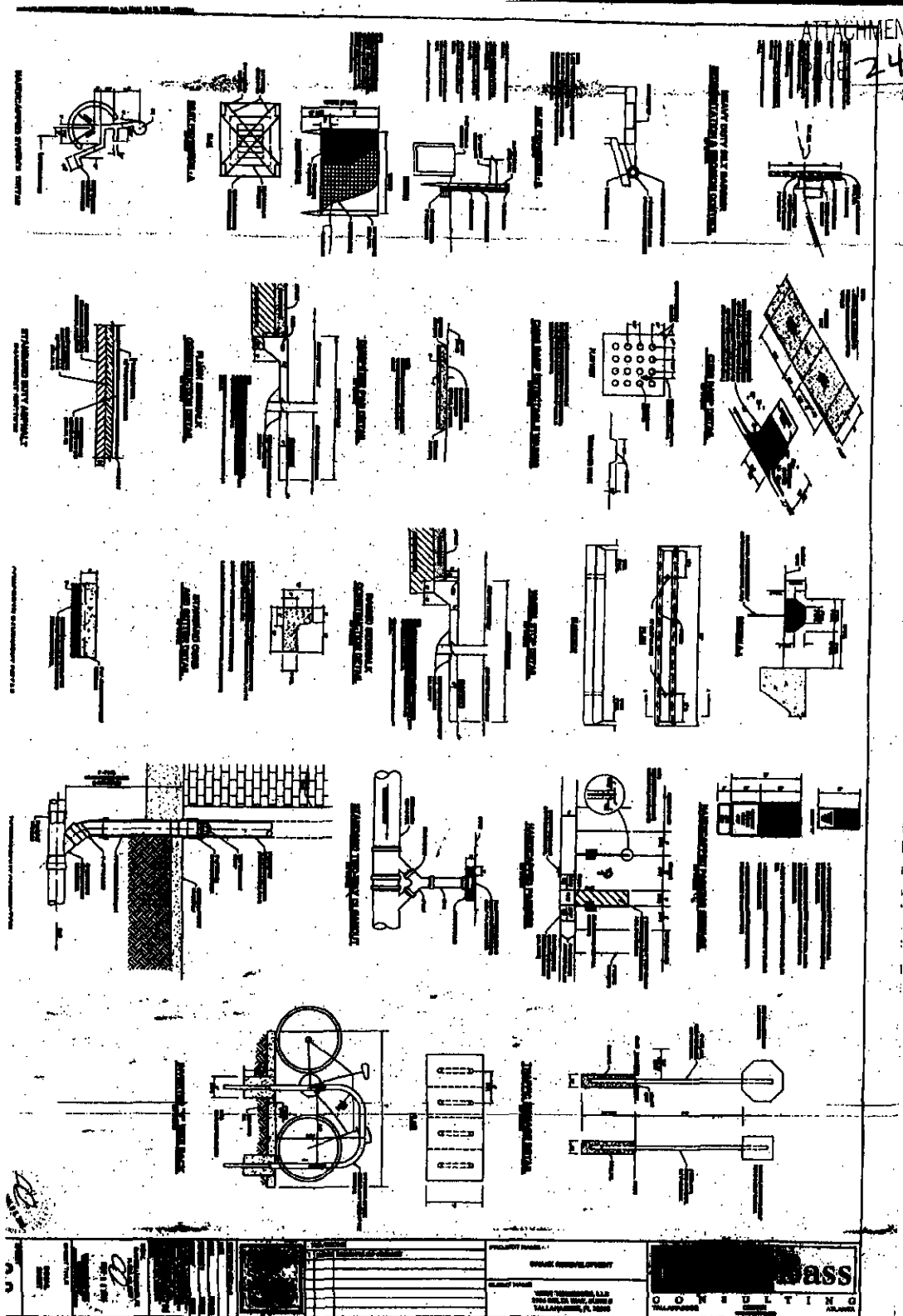




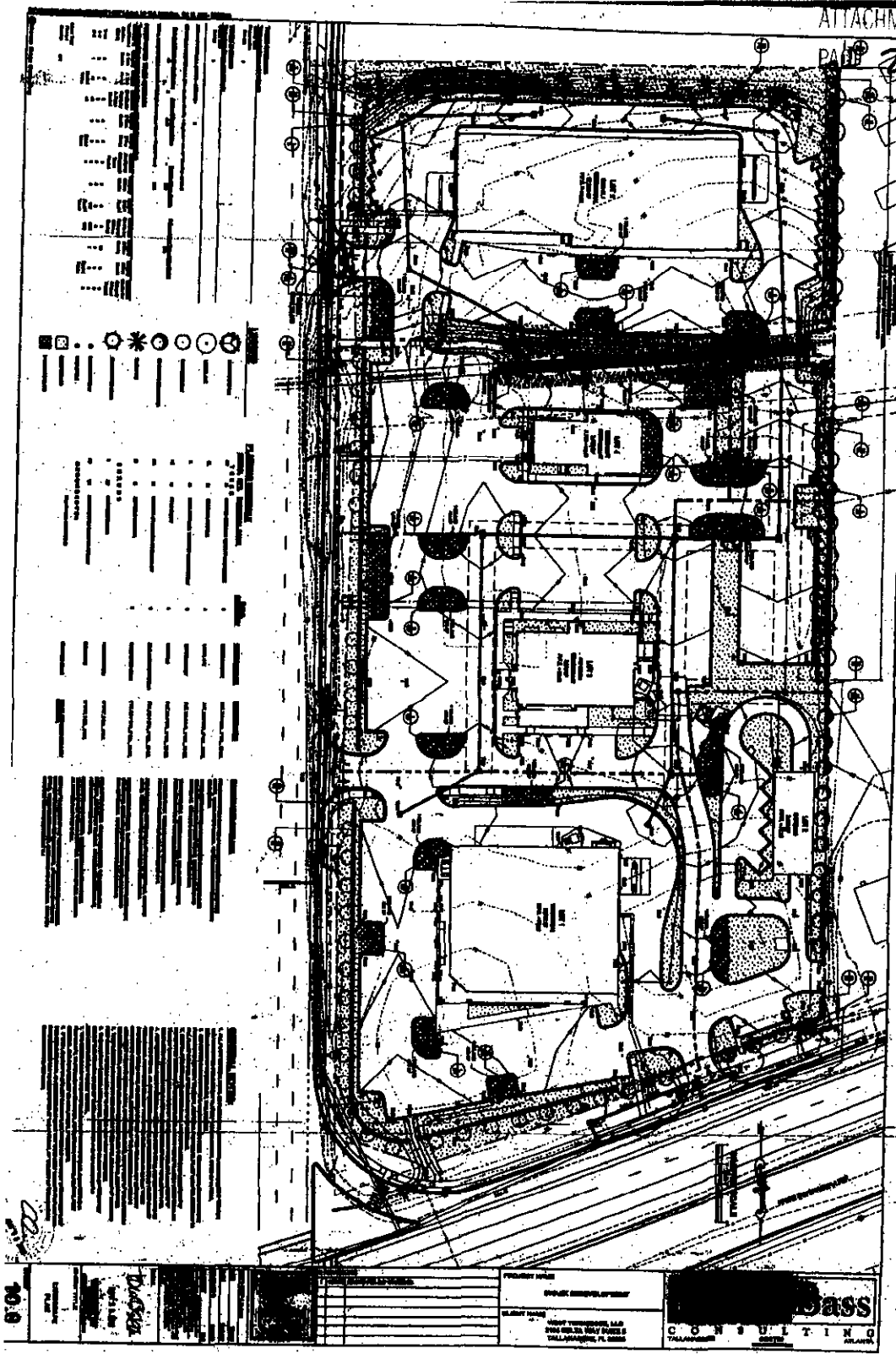
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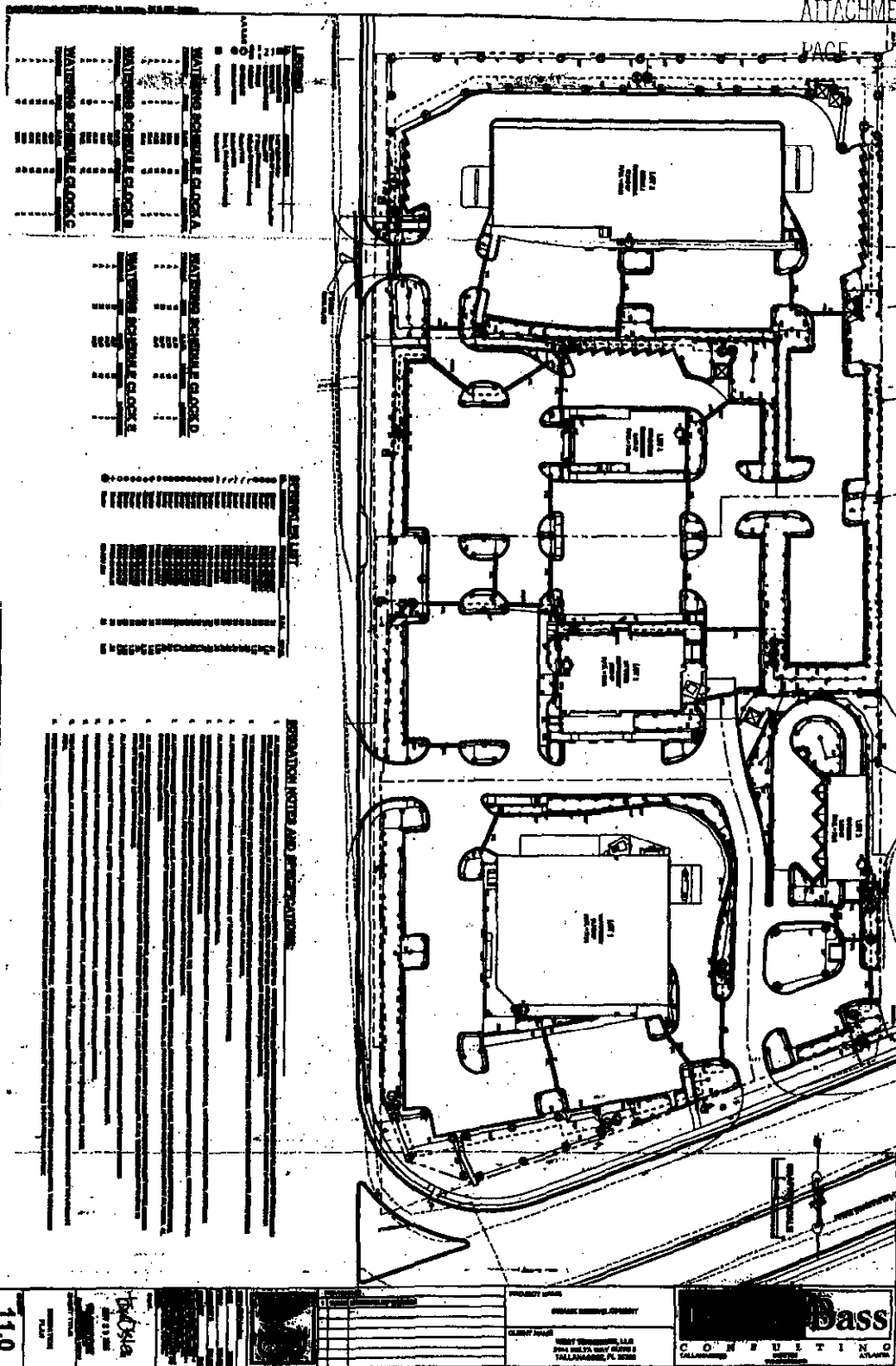


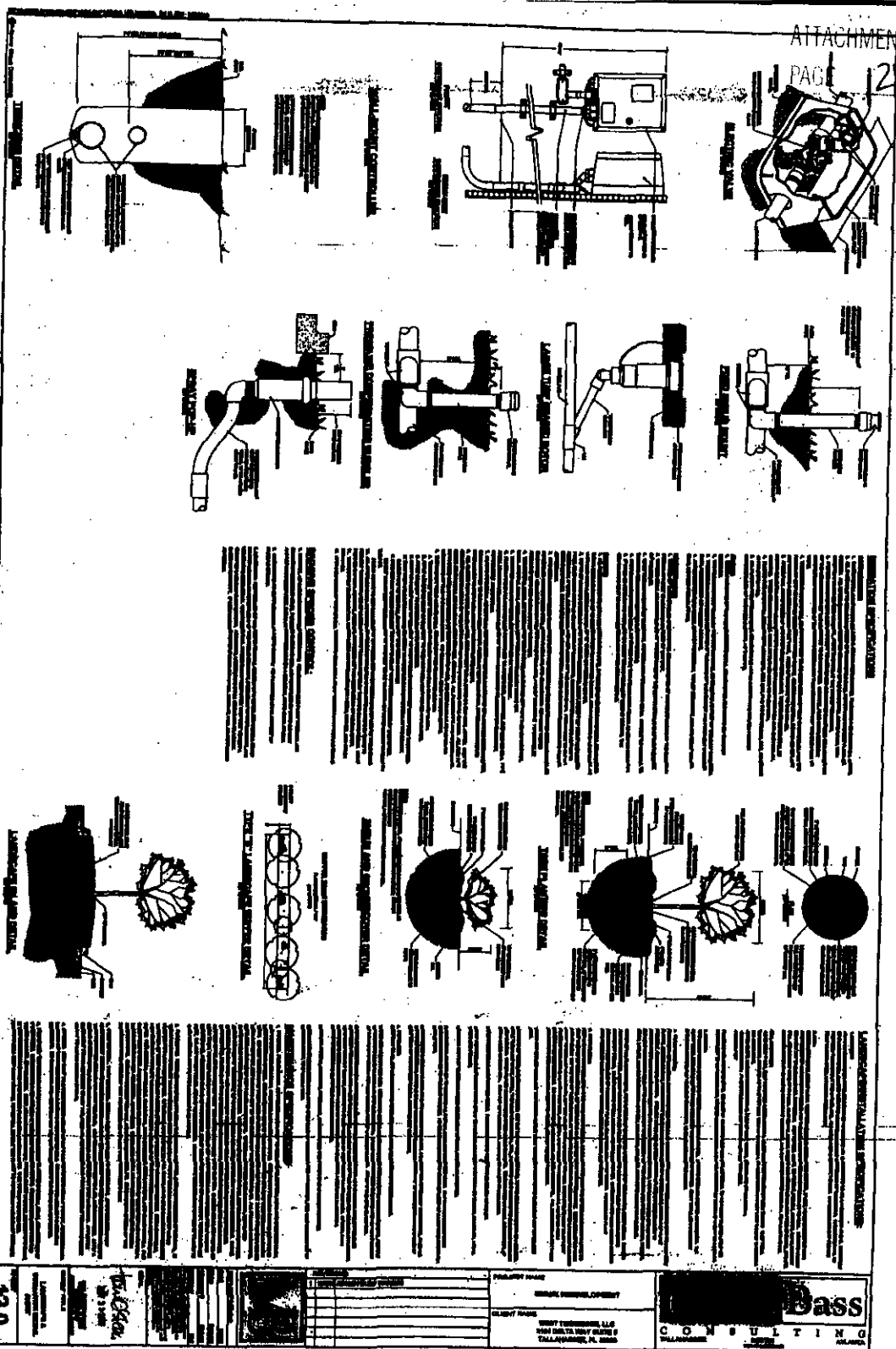












51 TYPICAL INLET CONNECTION  
SEE PAGE 2